

STATE OF MICHIGAN
COURT OF APPEALS

In re S. CONAWAY, Minor.

UNPUBLISHED
May 24, 2016

No. 330253
Jackson Circuit Court
Family Division
LC No. 15-001350-NA

Before: GADOLA, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her son, SC, at the initial dispositional hearing under MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). We affirm.

I. FACTS

In May 2015, the Department of Health and Human Services (DHHS) filed a petition asking the court to take jurisdiction over SC and to terminate respondent's parental rights to the child following the death of respondent's 21-month-old son, JP. The petition alleged that respondent was dating a man, SJ, who was the suspect in JP's death and the death of another child. The other child died in March 2015, and was the son of SJ's former romantic partner. Shortly after that child's death, in April 2015, respondent began dating SJ. She testified that she learned SJ was a suspect in a child's murder investigation "in the beginning of March."

Respondent testified that in May 2015, she took SC to the hospital after he woke up with petechiae all over his face and a bruise on his collar bone. A reviewing physician concluded that the "diffuse petechiae on his face, neck and upper shoulders" was "indicative of strangulation and medically diagnostic of physical abuse." A Child Protective Services investigator testified that SC told her that SJ " 'choked me,' and then point[ed] to his chest [and] his throat." A caseworker testified that a few days after SC received treatment at the hospital, respondent informed the caseworker that she was aware SJ was the prime suspect in a murder investigation involving a child. However, respondent told the caseworker that she believed SJ was "set up," and stated that she trusted him with her children.

Approximately two weeks later, respondent left JP at home to go get food while SJ was in the home. The next morning, respondent found JP dead in his playpen. The physician who conducted JP's autopsy found evidence of blunt force trauma to the child's head and asphyxia by smothering, bruises on his abdomen, head, lower back, upper and inner lips, and hemorrhaging in his lower eyelids. The physician concluded that JP died of asphyxiation by smothering during

an assault, and classified the manner of death as homicide. Proceedings leading to the termination of respondent's parental rights over her surviving child followed.

II. DUE PROCESS

Respondent first argues that the trial court erred by terminating her parental rights because she has a constitutional, fundamental due process right to parent SC. Because respondent did not assert this issue below, our review of her unpreserved constitutional claim is limited to plain error affecting substantial rights. *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014), citing *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Carines*, 460 Mich at 763.

There is no doubt that parents have a fundamental liberty "interest in the companionship, care, custody, and management of their children." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). However, a parent's right to control the custody and care of her child is not absolute, and in some circumstances, this right must yield to the state's legitimate interest in protecting the emotional, mental, moral, and physical welfare of the minor child. *In re Sanders*, 495 Mich 394, 409-410; 852 NW2d 524 (2014). When the state moves to destroy family bonds, it must provide parents with fundamentally fair procedures. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.), citing *Santosky v Kramer*, 455 US 745, 753-754; 102 S Ct 1388; 71 L Ed 2d 599 (1982). "In Michigan, procedures to ensure due process to a parent facing . . . termination of [her] parental rights are set forth by statute, court rule, [DHHS] policies and procedures, and various federal laws . . ." *Rood*, 483 Mich at 93.

Termination of parental rights may be ordered at the initial dispositional hearing if (1) the petition requested termination, (2) the trial court finds by a preponderance of the evidence that the child came within the jurisdiction of the court pursuant to MCL 712A.2(b), (3) the court finds that clear and convincing legally admissible evidence establishes a statutory ground for termination under MCL 712A.19b(3), and (4) the court finds by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(4); MCR 3.977(E); *In re AMAC*, 269 Mich App 533; 711 NW2d 426 (2006); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). These procedures exist to protect a parent from the arbitrary and oppressive deprivation of parental rights. *In re B & J*, 279 Mich App 12, 20 n 4; 756 NW2d 234 (2008). Likewise, they protect fundamental fairness by providing parents with notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." *Dow v State*, 396 Mich 192, 206; 240 NW2d 450 (1976); see also *Rood*, 483 Mich at 92.

In this case, it is clear that respondent's substantive and procedural due process rights were protected during the lower court proceedings. DHHS filed a petition alleging that respondent was an unfit parent and requesting the termination of her parental rights. MCR 3.961(A); MCR 3.977(A)(2), (E)(1). The trial court authorized the petition and concluded that petitioner met its burden of proof to establish jurisdiction pursuant to MCL 712A.2(b). MCR 3.977(E)(2). Thereafter, the court found that four of the statutory grounds under MCL 712A.19b(3) were established by clear and convincing evidence that was presented at the hearing. MCR 3.977(E)(3). Finally, the court found that termination was in SC's best interests

by a preponderance of the evidence. MCR 3.977(E)(4); MCL 712A.19b(5). Respondent fails to acknowledge that her right to control the care and custody of SC has limits, and she fails to argue that the termination of her parental rights was arbitrary and oppressive, or that she was denied notice and a meaningful opportunity to be heard. *B & J*, 279 Mich App at 20 n 4; *Dow*, 396 Mich at 206. Accordingly, respondent has not shown that any plain error occurred in this case.

III. BEST INTERESTS

Lastly, respondent argues that the trial court clearly erred by finding that termination of her parental rights was in SC's best interests. We review for clear error a trial court's finding that termination of parental rights is in a child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if the reviewing court is definitely and firmly convinced that the trial court made a mistake. *Christiansen v Gerrish Twp*, 239 Mich App 380, 387; 608 NW2d 83 (2000).

Before terminating parental rights, the trial court must find by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *Moss*, 301 Mich App at 90. In making a best-interest determination, courts may consider a variety of factors including the parent-child bond, the parent's parenting ability, the child's need for stability, finality, and permanency, and "the likelihood that the child could be returned to her parents' home within the foreseeable future, if at all." *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 63-64; 874 NW2d 205 (2015) (citation and quotation marks omitted).

In this case, the trial court focused on respondent's parenting ability and the likelihood that SC could be safely returned to respondent's care in the foreseeable future. The court found that respondent "had [a] complete lapse of any parenting skills or intellect," "made a multitude of egregious mistakes," and "went above and beyond to put [SC] in danger, just by her poor judgment." The court further noted that respondent put her own satisfaction before the safety of her sons, failed to take responsibility for JP's death, and had a history of forming relationships with volatile men. The court concluded that no services could fix respondent's parenting deficiencies, so it was unlikely that SC could ever be safely returned to respondent's home. Evidence presented at the hearing supported the trial court's findings and showed that respondent knew SJ was the suspect in a child's murder investigation before she began a relationship with him and that she was repeatedly warned about the danger SJ posed to her children. Despite this knowledge, respondent continued to allow SJ into her home and around her children, even after evidence arose showing that SJ had choked SC.

Respondent asserts that she shares a bond with SC, but even assuming this is true, this factor does not outweigh the trial court's findings regarding respondent's lack of parenting ability and the unlikelihood that SC could ever be safely returned to her care. Respondent argues that SC was placed with his father, so a custody change, rather than termination of her parental rights, would have been more appropriate and could have facilitated SC's placement with his father. However, respondent cites no authority suggesting that petitioner had the power or responsibility to facilitate a custody change as an alternative to a termination proceeding, thereby abandoning the issue. *In re Spears*, 309 Mich App 658, 674-675; 872 NW2d 852 (2015).

Finally, respondent contends that the order terminating her parental rights was an impermissible punitive measure against her, rather than a decision made in SC's best interests. Although it is true that "[t]he juvenile code is intended to protect children from unfit homes rather than to punish their parents," *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993), in this case, the trial court was properly protecting SC from an unfit and dangerous home environment. Respondent's suppositions regarding the trial court's motive for terminating her parental rights are nothing more than speculation, predicated on the invalid premise that the court erred by terminating her parental rights.

Affirmed.

/s/ Michael F. Gadola
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro